

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

This Document Relates to:  
All Cases

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) MDL No. 1:13-md-2419-FDS  
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**NOTICE OF FILING OF PLAN PROPONENTS' REQUEST TO (I) SUBMIT  
DECLARATIONS AS DIRECT TESTIMONY OF DECLARANTS AND (II) EXCUSE  
DECLARANTS FROM ATTENDANCE AT HEARING TO CONSIDER  
CONFIRMATION OF THE FIRST AMENDED JOINT CHAPTER 11  
PLAN OF NEW ENGLAND COMPOUNDING PHARMACY, INC.**

**PLEASE TAKE NOTICE** that, on May 12, 2015, Paul D. Moore, the Chapter 11 Trustee (the "Trustee") for the bankruptcy Estate of New England Compounding Pharmacy, Inc. ("NECC" or the "Debtor") and the Official Committee of Unsecured Creditors of NECC (the "Official Committee", and together with the Trustee, the "Plan Proponents"), filed the following document with the United States Bankruptcy Court, a copy of which is attached hereto as Exhibit A:

Plan Proponents' Request to (i) Submit Declarations as Direct Testimony of Declarants and (ii) Excuse Declarants from Attendance at Hearing to Consider Confirmation of the First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.

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Dated: May 12, 2015

Respectfully submitted,

**DUANE MORRIS LLP**

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**CERTIFICATE OF SERVICE**

I, Carol S. Ennis, hereby certify that on May 12, 2015, I caused a copy of the foregoing Notice to be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants, by first class mail, postage prepaid.

Dated: May 12, 2015

Boston, Massachusetts

/s/ Carol S. Ennis

Carol S. Ennis

# **EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

In re:  
NEW ENGLAND COMPOUNDING  
PHARMACY, INC.,  
  
Debtor.

Chapter 11

Case No. 12-19882-HJB

**PLAN PROPONENTS' REQUEST TO (I) SUBMIT DECLARATIONS  
AS DIRECT TESTIMONY OF DECLARANTS AND (II) EXCUSE  
DECLARANTS FROM ATTENDANCE AT HEARING TO CONSIDER  
CONFIRMATION OF THE FIRST AMENDED JOINT CHAPTER 11  
PLAN OF NEW ENGLAND COMPOUNDING PHARMACY, INC.  
[EMERGENCY DETERMINATION REQUESTED]**

Paul D. Moore, the Chapter 11 Trustee (the "Trustee") for the chapter 11 estate of New England Compounding Pharmacy, Inc. ("NECC" or the "Debtor"), and the Official Committee of Unsecured Creditors of NECC (the "Official Committee," and together with the Trustee, the "Plan Proponents"), by and through their undersigned counsel, respectfully request that this Court excuse the Declarants (as defined herein) from attendance at the hearing (the "Confirmation Hearing") to consider confirmation of the *First Amended Joint Chapter 11 Plan Of New England Compounding Pharmacy, Inc.*, dated February 22, 2015 (together with all exhibits, supplements or other documents related thereto filed with this Court, and as may be amended supplemented, or modified, the "Plan"),<sup>1</sup> scheduled for May 19, 2015 at 10:00 a.m. In support of this Request, the Plan Proponents respectfully represent as follows:

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<sup>1</sup> Terms not otherwise defined herein have the meaning ascribed to them in the Plan.

1. Numerous parties-in-interest (collectively, the “Declarants”) have submitted declarations (collectively, the “Declarations”) in support of confirmation of the Plan.<sup>2</sup> The Declarants include: (1) representatives of the persons and entities with whom the Trustee has reached settlements, which are identified in the Plan and which will be addressed at the Confirmation Hearing; and (2) representatives of plaintiffs’ groups that were material participants in the Trustee’s negotiations of those settlements

2. Subject to this Court’s approval, as requested herein, the Plan Proponents intend to offer the Declarations into evidence at the Confirmation Hearing as the direct testimony of the Declarants. The Plan Proponents and the Declarants originally anticipated that each Declarant would need to attend the Confirmation Hearing in person in order to be available for cross-examination by parties who filed objections to confirmation. Each Declarant has stated to the Plan Proponents his or her willingness to do so, if necessary.<sup>3</sup>

3. The Plan Proponents are pleased to report, however, that only the United States Trustee (the “UST”) has objected to confirmation of the Plan. *See United States Trustee’s Objection to Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.* [Dkt. No. 1272]. The Plan Proponents have conferred with counsel to the UST, who has informed the Plan Proponents that she has no objection to the Plan Proponents’ offer into evidence of the Declarations as the direct testimony of the Declarants at the Confirmation Hearing. Further, she does not intend to cross-examine any of the Declarants. If this Court permits the Declarations to be submitted

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<sup>2</sup> The Declarations are identified in **Exhibit A** annexed hereto. The Plan Proponents reserve all rights to submit further declarations, statements or other materials in support of confirmation of the Plan in advance of the Confirmation Hearing.

<sup>3</sup> The Plan Proponents note that the Declarants include representatives of the co-chairs of the Official Committee, *see* Dkt. No. 1238, principal counsel for the Official Committee, *see* Dkt. No. 1260, and Lead Counsel for the Plaintiffs’ Steering Committee, *see* Dkt. No. 1231, who will be present at the Confirmation Hearing regardless of the Court’s decision on this Request.

as the direct examination of each Declarant, the Plan Proponents do not intend to call any of the Declarants as a witness. The Plan Proponents respectfully submit, therefore, that the in-person attendance of the Declarants -- who are located in various regions throughout the country and have committed to be in attendance in Springfield if required -- at the Confirmation Hearing is unnecessary. Excusing the Declarants, many of whom are businesspeople resident in states as far-flung as California, Texas, North Carolina, Virginia, Oklahoma, New Jersey and Pennsylvania, from attending the Confirmation Hearing in person, will save the Declarants the considerable time, resources and expense necessary to travel from across the country to Springfield if, in fact, their testimony will not be required.

4. Accordingly, the Plan Proponents respectfully request that (i) the Declarants be excused from appearing in person at the Confirmation Hearing, and (ii) that the Declarations be admitted into evidence as their direct testimony. As an variant to subparagraph (ii) above, if it would be helpful to the Court and the Court deems it appropriate, the Plan Proponents respectfully request the Declarants be granted leave to appear at the Confirmation Hearing telephonically.

5. The Plan Proponents have given notice of this Request to the Office of the United States Trustee for Region One, all parties in this case who receive electronic service in this case through this Court's Electronic Case Filing ("ECF") system, and all parties to the multidistrict litigation in the United States District Court for the District of Massachusetts currently pending under the caption *In re New England Compounding Pharmacy Cases Litigation*, MDL No. 2419, Case No. 13-cv-02419 (D. Mass.) (the "MDL Proceeding") who receive electronic service through its ECF system. The Plan Proponents respectfully submit that under the circumstances, no other or further notice is necessary.

6. Because the Confirmation Hearing is scheduled for a week from the date of this Request and the Declarants must make or finalize travel arrangements in advance, the Plan Proponents respectfully request that this Court consider and rule on this Request on an emergency basis.

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Dated: May 12, 2015  
Boston, Massachusetts

Respectfully submitted,

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*Counsel to the Official Committee of  
Unsecured Creditors of New England  
Compounding Pharmacy, Inc.*



## **EXHIBIT A**

The “Declarations” are:

- the *Declaration of Michael F. Barrett, Esq. in Support of Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc. and for Approval of Inspira Settlement* [Dkt. No. 1225];
- the *Declaration of Kimberly A. Dougherty in Support of Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc. and for Approval of the High Point Settlement* [Dkt. No. 1226];
- the *Declaration of Kimberly A. Dougherty in Support of Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc. and for Approval of the Victory Settlement* [Dkt. No. 1227];
- the *Declaration of Frederic L. Ellis in Support of Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc. and for Approval of ARL Settlement* [Dkt. No. 1228];
- the *Declaration of Patrick T. Fennell in Support of Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc. and for Approval of Insight Settlement* [Dkt. No. 1229];
- the *Declaration of J. Scott Sexton in Support of Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc. (Relating to Settlement with Insight Health Corp., and Others - Virginia)* [Dkt. No. 1230];
- the *Declaration of Thomas M. Sobol in Support of Approval of the Unifirst Settlement and in Support of Approval of the First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.* [Dkt. No. 1231];
- the *Declaration of Henri G. Minette in Support of Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.* [Dkt. No. 1233];
- the *Declaration of Matthew K. Doonan, Esq. in Support of Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.* [Dkt. No. 1232];
- the *Declaration of Gregory Earl Thomas in Support of Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.* [Dkt. No. 1234];
- the *Declaration of Mark G. Ledwin on Behalf of Preferred Mutual Insurance Company in Support of Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.* [Dkt. No. 1235];
- the *Declaration of Frederic L. Ellis Concerning the National Compensation Program Established by the Proposed Amended Plan of Reorganization* [Dkt. No. 1236];

- the *Plaintiffs' Steering Committee's Declaration in Support of Approval of the First Amended Joint Chapter 11 Plan* [Dkt. No. 1237];
- the *Joint Declaration of Anne Andrews and Michael Coren, as Representatives of the Co-Chairs of the Official Committee of Unsecured Creditors, in Connection With The Official Committee's Support for Confirmation of the First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc. and Approval of the Settlements Contained Therein* [Dkt. No. 1238];
- the *Declaration of David J. Molton in Support of the Joint Motion of the Chapter 11 Trustee and the Official Committee of Unsecured Creditors for an Order Approving Plan Support and Settlement Agreement with Liberty Industries, Inc.* [Dkt. No. 1260];
- the *Declaration of Rita A. Bunch in Support of Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.* [Dkt. No. 1261];
- the *Declaration of Joseph A. Ziemianski In Support of Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.* [Dkt. No. 1284];
- the *Declaration of Liberty Industries, Inc. in Support of Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.* [Dkt. No. 1293];
- the *Declaration of Amanda J. Cox, Esq. in Support of Confirmation of First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.* [Dkt. No. 1296];
- the *Affidavit of Michael T. Ryan on Behalf of Pharmacists Mutual Insurance Company in Support of the First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc.* [Dkt. No. 1300]; and
- the *Declaration Of Brian Robischeau In Support Of Confirmation Of First Amended Joint Chapter 11 Plan Of New England Compounding Pharmacy, Inc.* [Dkt. No 1154].

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

In re:

NEW ENGLAND COMPOUNDING  
PHARMACY, INC.,

Debtor.

Chapter 11

Case No. 12-19882-HJB

**CERTIFICATE OF SERVICE**

I, Carol S. Ennis, hereby certify that on the 12th day of May, 2015, I caused a true and accurate copy of the foregoing Request to be served by electronic service via the Court's ECF service to those parties registered to receive electronic service and to all parties to the multidistrict litigation in the United States District Court for the District of Massachusetts currently pending under the caption *In re New England Compounding Pharmacy Cases Litigation*, MDL No. 2419, Case No. 13-cv-02419 (D. Mass.) who receive electronic service through its ECF system.

/s/ Carol S. Ennis

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